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# The Venezuelan Affair in the Light of International Law

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## THE VENEZUELAN AFFAIR IN THE LIGHT OF INTERNATIONAL LAW.

### I. THE CLAIMS OF THE ALLIES AGAINST VENEZUELA IN THE LIGHT OF INTERNATIONAL LAW.

### II. THE CONDUCT OF THE ALLIES IN THE LIGHT OF INTER- NATIONAL LAW.

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### I. THE CLAIMS OF THE ALLIES AGAINST VENEZUELA IN THE LIGHT OF INTERNATIONAL LAW.

It is not the purpose of this paper to pass judgment upon the validity of the particular claims of the Allied Powers against Venezuela, and still less to discuss the bearing of the Monroe Doctrine<sup>1</sup> upon the situation; it is rather the purpose of the writer to examine the general character of these claims in the light of international law, and to criti-

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<sup>1</sup> It cannot too often be reaffirmed, especially in view of some recent utterances to the contrary, that the Monroe Doctrine *does not, strictly speaking*, come within the scope of international law as such; it is an American policy based upon American interests and belongs to the domain of policy rather than of law.

cise the method of enforcing them adopted by the allies from this point of view. In order to make such a discussion intelligible, it will, however, be necessary to give a brief *résumé* of the facts, and especially to summarize the various claims of Great Britain and Germany.<sup>2</sup>

These claims may be classified as follows: 1. *Acts of violence against the liberty of British subjects and the seizure of British vessels*, viz: the false imprisonment and bad treatment of British subjects and the seizure of British fishing and trading vessels, together with the confiscation of their cargoes. Several of these seizures were made at or near the Island of Patos, a small and uninhabited island situated some three miles off the coast of Venezuela and about ten miles distant from Trinidad. This island is claimed by Great Britain as a part of Trinidad, which she conquered in 1797, and which was formally ceded to her by the treaty of Amiens in 1802. Venezuela also claims the island on the ground of cession by Spain in 1845, and denies that it formed a part of the cession of Trinidad in 1802. It is claimed by the partisans of Venezuela that this island is used as a base for smugglers who ship supplies into Venezuela and thus avoid the payment of the tax on goods imported into Venezuela from Trinidad. One of these seizures was made on the high seas and the vessel confiscated on the mere suspicion of having furnished arms to the revolutionists.<sup>3</sup>

On the other hand, the Venezuelan government has complained of the conduct of the British colonial authorities at Trinidad in furnishing arms and ammunition to the revolutionists and for harboring blockade runners and filibustering expeditions. It claims to have a particular grievance in the case of "The Ban Righ," a British steamship which was chartered by the insurgents for filibustering purposes and allowed to leave London after a brief detention on the assurance of the Columbian minister that she belonged to

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<sup>2</sup> The claims of Great Britain and Germany are the only ones taken into account in this paper, because they are the best known and the most important for our purpose.

<sup>3</sup> See correspondence respecting the affairs of Venezuela presented to Parliament in February, 1903. No. 108, pp. 126-29. Several of these seizures were made in Venezuelan waters, and seem to have been justified under the circumstances.

Columbia. "The Ban Righ" sailed to Venezuela, where she seems to have been of material assistance to the revolutionists.<sup>4</sup>

2. *Losses of British and German subjects in the course of recent civil wars and revolutions.* These are, as it would appear, mainly in the nature of forced loans, and of contributions and requisitions for military purposes. It is claimed that plantations and buildings have been pillaged and destroyed and that movables, more particularly cattle, have been appropriated by insurgents and government forces alike.<sup>5</sup>

3. *The claims of British and German creditors.* These include the ordinary bondholders and a number of German and English investors, some of whose investments, at least, have been guaranteed by the Venezuelan government.<sup>6</sup>

In examining these claims, it should be noted, in the first place, that the nature of the claims of Great Britain and Germany is by no means identical in all respects. Germany, as it appears, does not complain of acts of violence against her seamen or the seizure of her vessels and the confiscation of their cargoes. The British have, on the

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<sup>4</sup> See correspondence, or Par. "Blue Book," cited above, *passim*.

<sup>5</sup> See memorandum by the Imperial Chancellor on the subject of Germany's claims against Venezuela, published in the London *Times*, weekly edition, for December 12, 1902, and an interview with Chancellor von Buelow by a representative of the Associated Press in the New York *Times* for December 21, 1902.

<sup>6</sup> The chief loan is said to be one of 50,000,000 bolivares or about \$9,000,000 bearing interest at 5 per cent, negotiated by the Berliner Disconto Gesellschaft in 1896, with the Venezuelan customs pledged as security. The interest on these bonds, held mainly by Germans, is four years in arrears. The most important of the investments guaranteed by the Venezuelan government are said to be those of the stockholders in the great Venezuelan Railroad Company, a railroad 200 miles in length, built by German contractors with German capital at a cost (?) of \$20,000,000. The Venezuelan government guaranteed an interest of 7 per cent on this capital stock, and it is claimed that the government has not only failed to meet this obligation, but that it owes several million dollars for the transport of troops, munitions of war, etc. The British also presented claims on behalf of several English railroad companies in Venezuela for services rendered to the government and damage done to their property by government troops as well as for failure to meet deferred liabilities.

other hand, made these seizures and acts of violence and confiscation the chief burden of their complaints. Lords Balfour and Cranborne have repeatedly assured the British Parliament that the British government was influenced less by claims of British bondholders than by attacks on the liberty of British subjects. "Our first-line claims," says the *London Times*,<sup>7</sup> "are for outrages on the liberty and property of our fellow-subjects, and, including the shipping-claims, would be covered by a few thousand pounds. We have been ready all along to refer our other claims to a mixed commission."

It should also be noted that very little stress seems to be laid in England upon the second class of claims, viz: losses sustained by British and German subjects in Venezuela during recent civil wars and revolutions. It is upon these claims, however, that Germany insists most strongly. In an interview with a representative of the Associated Press, Chancellor von Buelow is reported to have said: "Among German claims in Venezuela, we give precedence to those arising from the last Venezuelan civil wars. These are not mere business debts, contracted by Venezuela, but they have grown out of acts of violence against German citizens in Venezuela, either by forced loans or by seizure of cattle without payment, or by the pillage of German houses and estates."<sup>8</sup>

Let us now see what principles of international law should govern the settlement of these various sorts or categories of claims.

In respect to the *first class of claims, viz: Acts of violence against the liberty of British subjects and the seizure of British vessels*, it should be observed that the question of their legality and justice seems, in large part, to hinge upon the question of title to the small and barren island of Patos. If this island belongs to Great Britain, the Venezuelan government has, in authorizing or sanctioning several of these seizures, clearly been guilty of a series of violations of British territorial sovereignty in British waters for which full and ample apology and reparation should

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<sup>7</sup> *London Times*, weekly edition, for December 26, 1902.

<sup>8</sup> See *New York Times* for December 21, 1902.

at once have been made. If, however, it belongs to Venezuela, some of the seizures, at least, may have been justified. In view of the geographical situation of the island, the fact that Great Britain has but recently taken formal possession of it, and the doubtful character of the British title at its best, there should be no reluctance on the part of Great Britain to submit the question of title or sovereignty to arbitration. An unwillingness to arbitrate this question would seem to indicate a fullness of confidence in the legality of her title, which the facts do not appear to justify, or a disposition to evade the Monroe Doctrine.

The seizure and confiscation of a British vessel on the high seas could only be justified on the theory that she had been engaged in rendering active assistance to the insurgents, or that she had violated an effective blockade. The so-called blockade, which President Castro claims to have established at the mouth of the Orinoco in the summer of 1902, seems, however, to have been wholly ineffective and was not recognized by either Germany or Great Britain.

But if Great Britain appears to have just and undoubted claims against Venezuela in a few cases, Venezuela would seem to be entitled to counter-damages for any injuries which she may have suffered in consequence of the escape of "The Ban Righ," *i. e.*, provided the British government can be convicted of any lack of "due diligence" in the matter.<sup>8a</sup> The British government would also be liable in damages for the use of Trinidad as a base of military operations, *i. e.*, the headquarters for the *regular and constant* supply of arms and ammunition to the insurgents; or for the fitting out of military or filibustering expeditions, provided these facts can be conclusively proven. It is now generally recognized that "international law imposes upon third powers, in case of an insurrectionary movement or of civil war, certain obligations towards established or recognized governments which are engaged in a struggle with an insurrection," and "it is especially interdicted to every third power to permit the organization within its domains of military expeditions hostile to established or recognized gov-

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<sup>8a</sup> This is not probable. The explanations offered by the British government seem to be entirely satisfactory.

ernments."<sup>9</sup> On the other hand, the mere furnishing of arms and ammunition to the insurgents in the ordinary way of trade merely justify their seizure as contraband of war, and would not involve any responsibility on the part of the British government.

In respect to the *second class of claims, viz: the losses of British and German subjects during recent civil wars and revolutions*, it is impossible to pronounce until all the facts regarding each particular claim are definitely known and ascertained. These claims are often grossly exaggerated<sup>10</sup> and they should, in all cases, be passed upon by a mixed commission or by a court of arbitration. The general

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<sup>9</sup> See Art. I and Art. II, 3, of the rules adopted by the *Institut de Droit International* in *Annuaire* for 1900.

<sup>10</sup> The following examples selected from Moore's Work on Arbitration may serve to illustrate the gross attempts at fraud and exaggeration which usually, if not always, accompany these claims:

The Civil War claims of Great Britain against the United States, which were settled by a mixed commission in 1873, amounted (with interest) to about \$96,000,000. Less than \$2,000,000 was actually awarded to the British claimants. Of the 478 British claims 259 were for property alleged to have been taken by the military, naval or civil authorities of the United States; 181 for property alleged to have been destroyed by the military and naval forces of the United States; 7 for property destroyed by the Confederacy; 100 for damages for the alleged unlawful arrest and imprisonment of British subjects by the authorities of the United States; 77 for damages for the alleged unlawful capture and condemnation or detention of British vessels and their cargoes as prize of war by the naval forces and civil authorities of the United States. See Moore on Arbitration, I, pp. 692-93.

The claims of France growing out of the Civil War were also settled by a mixed commission which met in 1880-84. They aggregated about \$35,000,000. The amount actually awarded was \$625,566.35, *i. e.*, less than 2 per cent of the amount claimed. Many of the claims are said to have been fraudulent and others were greatly exaggerated. Most of the awards are said to have been for injuries inflicted by the armies of the United States, *i. e.*, presumably for violations of the laws of warfare. See Moore, II, pp. 1133 ff, 1156 ff.

The claims of the citizens of the United States against Mexico, which were presented to the mixed commission which met in July, 1869, and continued in session until January, 1876, amounted to the enormous sum of \$470,000,000. The actual amount awarded was \$4,000,000 or less than 1 per cent. The claims of citizens of Mexico against the United States amounted to \$86,000,000. They received \$150,000. See Moore, II, pp. 1319 ff.

principles of international law which should govern all such awards are, however, sufficiently clear and well-established, and may be stated in a few words.

The general rule is that "*a sovereign is not ordinarily responsible to alien residents for injuries they receive on his territory from belligerent action, or from insurgents whom he could not control.*" It is also "a received principle of public law that the *subjects of foreign powers domiciled in a country in a state of war (or insurrection) are not entitled to greater privileges or immunities than the other inhabitants of the insurrectionary district.* If, for a supposed purpose of the war, one of the belligerents thinks proper to destroy neutral property, the other cannot legally be regarded as accountable therefor. By voluntarily remaining in a country in a state of civil war they must be held to have been willing to accept the risks as well as the advantages of that domicile."<sup>11</sup>

These principles have repeatedly been enunciated by our leading statesmen as well as by those of Europe,<sup>12</sup> and they have the sanction of nearly all the leading authorities on international law, like Calvo, Pradier-Fodéré, Funck-Brentano et Sorel, Bluntschli, Rivier, Hall, etc. They have invariably been applied by European states in their relations with each other, although they have sometimes been violated in their dealings with weaker states, more particularly with China and the republics of South and Central America.

There are, however, a number of exceptions which must be made to these general principles. Indemnity is due by way of exception in the following cases: (1) Where the act from which the foreigners have suffered was directed against foreigners in general as such, or against these as the subjects of some particular state. (2) Where the injury has resulted from an act contrary to the laws or treaties of the state in which the act was committed, and for which no

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<sup>11</sup> See Wharton's Digest, II, pp. 576-78.

<sup>12</sup> See especially the notes of Prince Schwartzberg and Count Nesselrode, in behalf of the Austrian and Russian governments respectively, in reply to certain claims of the British government which were based upon injuries to British subjects during the revolutions in Tuscany and Naples in 1848. Cited by Pradier-Fodéré, I, § 205, pp. 343-45.



redress can otherwise be obtained. (3) When there has been a violation of the principles of international law, more particularly of the laws of legitimate warfare. (4) In cases where there has been an evident denial or a palpable violation of justice, or where there has been an undue discrimination against foreigners in the administration thereof.<sup>13</sup>

In the application of these principles to the claims under consideration, constant reference must be made to the laws of modern warfare, more especially to the *fundamental law of reasonable military necessity, viz: that only so much violence is permissible in war as is sufficient to destroy the enemy's power of resistance*. Pillage is strictly forbidden and private property on land is not subject to capture except in the regular way of fines, requisitions, and contributions. The invader has an undoubted right to levy or collect these at his own discretion, and he may, if he chooses, make war support itself. But they should be as orderly and as light as possible, and they should not exceed the needs of the troops or the resources of the district in which they are levied. Still it must always be borne in mind that the *law of reasonable military necessity* is the highest law of the land in time of war, and that foreigners do not occupy a privileged position and are, by no means, exempt from the operation of this law. On the other hand, they are exempt from military service and the exaction of forced loans for the support of military operations, although they may be called upon to support the war in the ordinary way of taxation.

In respect to the *third class of claims, viz: those of British and German bondholders and British and German creditors whose investments have been guaranteed by the Venezuelan government*, a very few words must suffice here. The few authorities, comparatively speaking, who discuss this question are almost equally divided in their opinions. The right of a state to use coercive measures in the collection of debts due its subjects by another state is asserted, *e. g.*, by Hall, Phillimore, and Rivier; but it is denied by Calvo, Pradier-

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<sup>13</sup> See the rules adopted by the *Institut de Droit International Annuaire* for 1900; Pradier-Fodéré, §§ 204 and 1336; and Wharton's Digest, II, §§ 225 and 230.

Fodéré, de Martens, and Rolin-Jaequemyns. It is argued, on the one hand, that the public faith, the so-called "honor of the prince," is peculiarly engaged in behalf of contracts of this nature; that the foreigner may have no other means of redress than that of appealing to the government of the state to which he owes allegiance, and which is supposed to have an interest in the fortunes and prosperity of its citizens abroad; and that stock in the public debt held even by an enemy is exempt from seizure and its interest payable even in time of war. On the other hand, it is urged that hazardous loans and investments should be discouraged as much as possible; that those making them do so as a rule with a full knowledge of the risks involved and in the hope of exceptionally large returns; that the natural penalty of a failure on the part of a state to pay its debts is a loss of credit; that coercive measures for the collection of bad debts have never been employed except against a weaker state; and that in any case foreigners cannot expect to be preferred to native creditors.

The leading statesmen of England and America also occupy opposite sides in this controversy. The English view, as stated by Lord Palmerston in 1848 in a circular addressed to representatives of Great Britain in foreign countries, insists that the question as to whether such claims are to be made a subject of diplomatic negotiation is "for the British government entirely a matter of discretion, and by no means a question of international right."<sup>14</sup> With a view, however, of discouraging the investment of British capital in hazardous loans to foreign governments and of encouraging investment in profitable undertakings at home, "the British government has hitherto thought it the best policy to abstain from taking up as international questions the complaints made by British subjects against foreign governments which have failed to make good their engagements in regard to such pecuniary transactions." But he intimates that such losses might become so great as to make a change of policy in this respect advisable. This view was reaffirmed by Lord Salisbury in 1880.

Mr. Blaine, acting in his capacity as Secretary of State

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<sup>14</sup> Cited, *et. g.*, by Phillimore, II, Chap. 3.

in 1881, laid it down "as a rule of universal acceptance and practice" that a "person voluntarily entering into a contract with the government of a foreign country or with the subjects or citizens of such foreign power, for any grievances he may have or losses he may suffer resulting from such contract, is remitted to the laws of the country with whose government or citizens the contract is entered into for redress."<sup>15</sup> The government of the United States has not only always refused to use any other means than its good offices for the collection of such claims, but it has not concealed the fact that it "cannot but regard with great anxiety the attempt of a foreign government to compel by force the payment of mere contract debts due subjects of such governments by a South American state."<sup>16</sup>

## II. THE CONDUCT OF THE ALLIES IN THE LIGHT OF INTERNATIONAL LAW.

In the preceding part of this discussion, an attempt was made to classify and discuss the claims of England and Germany against Venezuela in the light of certain well-established principles of international law. It is the purpose of the writer now to discuss the methods employed by the allies in enforcing their claims and to criticise their conduct in particular instances.

The general principles laid down were that "ordinarily, or as a general rule, no indemnity is due to foreigners for injuries which they may receive on his territory from beligerent action, or from insurgents whom he could not control," and that "the subjects of foreign powers domiciled in a country in a state of war (or insurrection) are not entitled to greater privileges or immunities than the other inhabitants of the insurrectionary district." Certain exceptions to these rules were, however, admitted<sup>17</sup> under which head some of the claims of the allies undoubtedly fall.<sup>18</sup>

<sup>15</sup> Mr. Blaine, Secretary of State, to Mr. Logan, 1881, in Wharton's Digest, II, § 231.

<sup>16</sup> Mr. Frelinghuysen, Secretary of State, to Mr. Lowell, 1883, in Wharton's Digest, II, § 232.

<sup>17</sup> See above, p. 255.

<sup>18</sup> Up to the present time no state has admitted, unless by way of exception, any *obligation* to indemnify even its own subjects for

In attempting to secure redress or justice, foreigners should in the first instance have recourse to the local or territorial tribunals of the district in which they are domiciled, or, as Vattel<sup>19</sup> puts it, to the "judge of the place." Local remedies should first be exhausted before resorting to diplomatic means of obtaining redress; but this rule "does not apply where there is no local judiciary, or where the judicial action is in violation of international law, or where the test is waived, or where there is undue discrimination." "It does not apply to countries of imperfect civilization, or to cases in which prior proceedings show great perversion of justice"; "but such denial of justice must be definitely shown."<sup>20</sup>

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injuries or losses sustained during a period of war or insurrection. Such claims were ruled out by the United States government in respect to losses inflicted upon British subjects by the Confederate authorities during the Civil War (see Moore on Arbitration, I, p. 684), although a mixed commission was instituted after its close for the consideration of claims arising out of captures by United States cruisers, arbitrary arrests, compulsory military service, and other alleged violations of the personal rights of British subjects. A similar convention was also concluded with France. A commission or Court of Claims was also established at Washington in 1868 to examine the claims of American citizens and foreigners based upon losses or acts of spoliation suffered during the Civil War in consequence of the conduct of the Federal authorities. Indemnities for similar claims have been granted by European states, notably by France, but it is universally admitted that there is no obligation in this matter.

<sup>19</sup> Book II, Chap. 8, § 103. Cf. Book II, Chap. 6, §§ 72 and 73.

<sup>20</sup> Wharton's Digest, II, §§ 241 and 242, espec. p. 695. Calvo, the great South American publicist, seems to be the only great authority on international law who refuses to admit these exceptions. He denies categorically that a government is responsible by way of indemnity for any losses or injuries sustained by foreigners in time of civil war or internal troubles. "To admit the principle of indemnity," he says, "would be to create an exorbitant and fatal privilege essentially favorable to powerful states and injurious to weaker nations, to establish an unjustifiable inequality between natives and foreigners." It would be an attack on one of the essential elements of the independence of nations, viz: that of territorial jurisdiction. "This," he says, "is the real significance of this frequent recourse to the diplomatic method of settling disputes which by their nature and surrounding circumstances belong to the exclusive domain of the ordinary courts." Calvo, III, § 1280, p. 142. Cf. § 1297 and Vol. VI, § 256. The doctrine of Calvo does not, however, seem to have found any support outside of Latin

Let us now consider the methods adopted by the Allied Powers in enforcing their claims. It appears from the "Correspondence respecting the Affairs of Venezuela," presented to the British Parliament in February, 1902, that it was mainly a series of attacks on the liberty and property of British subjects culminating in the seizure of the "Queen" on the high seas and the confiscation of that vessel by the Venezuelan government<sup>21</sup> which finally led the British government to address a formal protest to that of Venezuela on July 30, 1902. The Venezuelan government was informed that unless it "promptly pay to the injured parties full compensation wherever satisfactory evidence has been furnished to His Majesty's government that such is justly due, His Majesty's government will take such steps as may be necessary to obtain the reparation which they are entitled to demand from the Venezuelan government in these cases," etc.<sup>22</sup> In reply to these demands, the Venezuelan government stated that some of the cases mentioned had already been settled, that others were on the road to settlement (*i. e.*, to be decided *ex parte* by the Venezuelan government), but that the Venezuelan government had decided to postpone its reply to all such representations in consequence of the partiality towards the revolutionists displayed by the government of Trinidad, and pending a settlement

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America. Its acceptance might leave foreigners in certain localities without any protection whatever against injustice or oppression. On the other hand, it must be admitted that diplomacy seems to give an undue advantage to stronger against weaker states. Differences of this nature should always be settled by mixed commissions or courts of arbitration. In order to make the necessary arrangements for these, resort to diplomacy or negotiation is, however, absolutely necessary.

The principle of irresponsibility has been incorporated in a number of treaties between South American and European states with each other. It was incorporated in the resolutions of the Pan-American Congress which met at Washington in 1889 and in the Constitution of Venezuela adopted in 1893. See report presented by M. Brusa to the *Institut de Droit International* for 1898 in *Annuaire*, p. 121; article by M. de Bar in *Revue de Droit International* for 1899, t. 29, p. 469, and Pradier-Fodéré, I, § 205, p. 347.

<sup>21</sup> See "Blue Book" on Venezuela, No. 108, pp. 126-129, for a list of these seizures.

<sup>22</sup> *Ibid.*, No. 110, p. 129, and No. 122, p. 138.

relative to the "Ban Righ" question.<sup>23</sup> This position was maintained by Venezuela in spite of another communication from Great Britain. This attitude on the part of Venezuela finally led to the ultimatum of December 7, 1902. In this ultimatum the British government demanded of the Venezuelan government that it recognize in principle the justice of all well-founded claims. These are to include those of the bondholders and the civil war claims, as well as the shipping claims and those which had arisen in consequence of the maltreatment or false imprisonment of British subjects. In these last-named cases immediate payment was demanded; but in respect to other classes of claims, the British government announced that it was willing to accept the decisions of a mixed commission as to the amount and security for payment.<sup>24</sup>

The memorandum prepared by the Imperial Chancellor on the subject of Germany's claims against Venezuela,<sup>25</sup> states that "as the result of numerous applications the Venezuelan government issued a decree on January 24, 1901, by which a commission consisting solely of Venezuelan officials was to decide upon all claims." That decree, he says, was unsatisfactory because (1) all claims originating before the presidency of Senor Castro were ignored; (2) any diplomatic protest was precluded; (3) payments were to be made with bonds of a new revolutionary loan, which, in the light of previous experiences, would evidently be almost worthless. All attempts to get the decree altered failed, and the Imperial government refused to recognize it. Similar declarations were made by the governments of Great Britain, the United States, Italy, Spain, and the Netherlands. "But as Venezuela insisted that foreigners could not be treated differently from Venezuelan subjects, and that the claims must be considered as coming within the scope of internal

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<sup>23</sup> *Ibid.*, No. 123, pp. 139-140.

<sup>24</sup> For the text of the ultimatum and a very amusing reply, see the Par. "Blue Book," cited above, No. 217, pp. 187-189.

<sup>25</sup> See London *Times* (weekly edition) for December 12, 1902. Cf. Communication, dated December 7, 1902, of Von Pilgrim-Baltazzi, German Charge d'Affaires to German Minister of Foreign Affairs in New York *Times* for December 14, 1902.

affairs, the Imperial government examined the German claims itself, and, so far as they appeared well-founded, made the Venezuelan government responsible for them." Venezuela finally declined all further discussion, claiming that the settlement of foreign war claims by diplomatic means was out of the question. "That," the chancellor exclaims, "is not in accordance with international law."

As a result of this attitude on the part of the Venezuelan government, "and as in the last civil war Germans had been treated by the Venezuelan government troops with especial violence," the Imperial Charge d'Affaires at Caracas handed to the Venezuelan government on December 7, 1902, an ultimatum demanding the immediate payment of some 1,700,000 bolivares or \$340,000, the amount of the civil war claims of Germany up to the year 1900. To these were added the claims of German firms for the building of a slaughter-house at Caracas and those of the German Great Venezuelan Railroad Company, as well as a demand for the fixing and guaranteeing of the amount of the claims arising out of the recent civil war.

It will thus be seen that Venezuela, acting in accordance with the Calvo doctrine which she appears to have incorporated in her own constitution and laws,<sup>26</sup> insisted upon an *ex parte* settlement of the claims of the allies by her own authorities. She refused even to discuss the complaints of Great Britain until her own grievances relative to the "Ban Righ" question and the conduct of the British colonial authorities at Trinidad had been settled. In the absence of complete and definite knowledge respecting the character and degree of guilt of the British government and its agents in these matters, it is impossible to say whether the

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<sup>26</sup> See the Constitution of 1893. Article II of the new law bearing on the rights of foreigners submitted to the Venezuelan Congress by President Castro in March, 1902, declares that "foreigners shall have no right to resort to the diplomatic channel, except when having exhausted all legal means before the competent authorities, it clearly appears that there is a denial of justice or notorious injustice." This law seems to make concessions which Calvo himself was not prepared to make. For the text of this law, see *Current History* for June, 1902, Vol. XII, p. 316.

Venezuelan government was justified in refusing reparation for its attacks on the liberty and property of British subjects; but it would seem that such a high-handed act as the seizure of a British vessel on the high seas demanded at least some explanation, if not a full and prompt apology and reparation. Her method of dealing with the German claims, however ill-founded these may have been, was also extremely objectionable from the point of view of international law and diplomacy.

Under these circumstances (assuming the facts to be as stated in the official reports), the allies seem to have been legally justified in resorting to coercive measures for the purpose of securing at least the proper consideration of their claims. The method adopted was that of reprisals. They agreed in the first place to seize the gunboats of the Venezuelan navy, and then to establish a "pacific" blockade of certain Venezuelan ports.

This method was open to no serious objection. Reprisals have long been a recognized mode of obtaining reparation in cases of an evident denial or an unreasonable delay of justice<sup>27</sup> after all other means of obtaining redress have been exhausted. They consist in the forcible seizure and sequestration of goods belonging to the offending state or its subjects, and holding them until a satisfactory reparation is made for the alleged injury. The alternative is war, from which reprisals differ only in degree and extent of violence used and in the consequences of such acts of violence upon both belligerent and third powers.<sup>28</sup> Reprisals may be exercised in many ways, and they vary in the extent and degree of violence employed, from the seizure of a few merchant or war vessels belonging to the offending state or the "pacific" blockade of a few ports to the temporary occupation of a portion of its territory. It is particularly to be noted that "these measures imply a temporary sequestration, as opposed to confiscation or destruction of

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<sup>27</sup> For the classic passage on reprisals, see Vattel, Book II, Chap. 18, p. 342.

<sup>28</sup> So, for example, there is no obligation of neutrality on the part of third powers, and a treaty of peace is unnecessary on the part of the belligerents.



the property taken,"<sup>29</sup> and that property thus taken should be restored after reparation has been made. "The objection sometimes made to reprisals, that they are applicable only to the weaker Powers, since a strong Power would at once treat them as acts of war, is indeed the strongest recommendation of this mode of obtaining redress. To localize hostile pressure as far as possible, and to give it such a character as shall restrict its incidence to the peccant state, is surely in the interest of the general good."<sup>30</sup>

A favorite form of reprisal has in recent times been that of pacific blockade. It consists in the so-called "pacific" or "peaceful" blockade of a portion or the whole of the coast of the offending state. Authorities on international law are divided<sup>31</sup> in their opinions as to the legality, justice and real character of pacific blockades; but there have been at least a dozen instances<sup>32</sup> of its application since the date of its first appearance in 1827, and they form a part at least of the practice, if not of the theory, of international law. It should, however, be observed that neutrals or third states need not recognize them as binding upon themselves, in which case it must be admitted that they may remain largely ineffective.<sup>33</sup>

<sup>29</sup> T. E. Holland in a letter to the *London Times* (see weekly edition) for December 26, 1902.

<sup>30</sup> See Holland, cited above.

<sup>31</sup> As more or less in favor of pacific blockade, we may cite Fiore, Rolin-Jacquemyns, Pradier-Fodéré, Heffter, Calvo, Couchy, Perels, Bulmerincq and Lawrence; as opposed Hautefeuille, Pistoye, et Duverdy, Fauchille, Geffcken, Bluntschli, De Martens, Hall and Woolsey.

On the one side it is urged that pacific blockades are humane, that they limit or localize the area and violence of the struggle, that they do not necessarily lead to war, and that, whether we like them or not, they have been introduced into the practice of the law of nations. On the other hand, it is urged that they are based upon the dictates of interest rather than upon those of humanity, that they are only resorted to by stronger against weaker nations, that they are apt to lead to war, and that they impose onerous duties upon third powers or, if not enforced against these, are illusory and ineffective.

<sup>32</sup> For a list, see Calvo, III, liv. 19, § 6, pp. 534 ff.

<sup>33</sup> The pacific blockade of the coast of Greece in 1886 was a model in this respect. Only the Greek flag was excluded. The pacific blockade of Crete in 1897 unfortunately marked a return to the older and

As has been said, no sound objection can possibly be made either against the method of reprisals in general or against the specific forms of reprisal adopted by the allies, viz: the seizure and sequestration of the Venezuelan gunboats and the "pacific" blockade of certain portions of the Venezuelan coast. But no sooner had the small and insignificant Venezuelan navy been seized than its German captors were guilty of an act which amounted to an act of war and which was a distinct violation of the law of reprisal, viz: the sinking of several Venezuelan gunboats.<sup>34</sup> This act of warfare was soon followed by the bombardment of Puerto Cabello under circumstances which could hardly be justified even during war.<sup>35</sup>

It is therefore scarcely a matter for surprise that Premier Balfour should have admitted to Parliament on December

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wholly indefensible practice of interfering with the commerce of third states. See Lawrence, *Principles of International Law*, App. IV.

The view taken above is in accordance with the position of the United States and, we believe, is in agreement with the usual practice of Great Britain as well, although Germany apparently assumes a different attitude towards third powers. The instructions to naval officers, issued by the British Admiralty (see Par. "Blue Book," No. 183, pp. 170-171), on December 11, 1902, show, however, that Great Britain intended to follow the German view in this instance. The blockade is to be enforced against third powers as well as against Venezuela. The United States showed her attitude by refusing to recognize it. Our view has the sanction of the *Institut de Droit International*, which, after having declared against pacific blockades in 1874, declared itself in 1887 in favor of permitting them under the following conditions: (1) that "vessels with a foreign flag may be permitted to enter freely in spite of the blockade; (2) the pacific blockade must be officially declared and notified, and maintained by a sufficient force; (3) the vessels of the blockaded power which does not respect such a blockade may be sequestered. The blockade being ended, they should be restored together with their cargoes to their owners without having been injured in any respect." See *Annuaire de l'Institut de Droit International*, 1887-88, pp. 300-301.

<sup>34</sup> In German official circles this act was explained on the following contradictory grounds: (1) that the vessels were old and unseaworthy; (2) that it was necessary in order to prevent them from falling into the hands of the enemy.

<sup>35</sup> This bombardment was due to an insult to the British flag by a mob. The Venezuelan government seems to have been given insufficient time for the requisite apology or reparation.

17 that these were not methods of peaceful coercion, but acts of war.<sup>36</sup> There followed the official declaration of a war blockade on December 20. The seizure of the Venezuelan navy and the pacific blockade of the Venezuelan ports, intended as mere acts of reprisal, had, owing to the hasty and ill-considered acts of the allies, more especially of Germany, ripened into actual war, and this, after overtures for peace had been made and Venezuela had practically surrendered to the Allied Powers.

Another incident of the war which has attracted much adverse criticism was the shelling of the fort of San Carlos by the "Panther" and several other German warships on January 21 and 22, 1903, in which a number of non-combatants as well as soldiers were killed and wounded. This bombardment was made while negotiations were pending and it was variously explained by German officials and commanders as due to a desire on their part to make the blockade more effective by seeking to prevent the importation of contraband, more particularly of coffee, into Venezuela *via* Colombia, and to chastise the insolence of the Venezuelans and their exaltation over the affair of January 17, when the "Panther" was successfully turned back after a vain attempt to enter Lake Maracaibo.<sup>37</sup>

We have here a bundle of contradictions as to the facts, but the vital facts in the controversy, viz: that it was the movements of the "Panther" which provoked the fort of San Carlos to action, and that the bombardment was instituted during a critical period in the conduct of negotiations, are well established. These movements the "Panther" had a distinct legal right to make, from whatever motive, under the laws of warfare; but they constituted an advance into the enemy's country during a period in which

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<sup>36</sup> It is, however, to be regretted that the Prime Minister allowed himself to be drawn into a declaration against the validity of pacific blockades.

<sup>37</sup> There are also conflicting statements as to the original motive of the "Panther" in entering the lake. By some she is said to have entered for the purpose of seeking refuge from a storm; by others in order to attack a Venezuelan gunboat. The true reason is probably that given by German officials, viz: that she was engaged in an attempt to make the blockade more effective.

hostilities should have been suspended, *i. e.*, pending the conduct of negotiations, although no truce had formally been declared.

Another interesting and, as it seems, an altogether novel feature in this controversy is the claim to preferential treatment made by the allies over against the states, notably France, which had effected settlements with Venezuela without resorting to coercion. Such preferential treatment, while perhaps not directly contrary to international law, would undoubtedly, as Minister Bowen is reported to have intimated to the allies, be offensive to modern civilization and contrary to modern conceptions of international morality. It would be an incentive to forcible and warlike methods of coercion in the collection of debts, rather than to a peaceful settlement of claims of this character.<sup>38</sup> We await the decision of the Hague Tribunal on this point with the utmost confidence in its wisdom and impartial judgment.

*Amos S. Hershey.*

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<sup>38</sup> It has, however, been urged on the other side that "these creditors of Venezuela, who, having taken no part in the heat and burden of the day, desire to share equally with those who have spent treasure and perhaps blood, in reducing President Castro to order" should not participate in the division of the fruits of conquest. *London Times* (weekly edition) for February 6, 1903.

The case seems to be somewhat analogous to proceedings in involuntary bankruptcy. In such a case the creditors who have instituted legal proceedings are not preferred to those who enter their claims afterwards. All stand upon an equal footing before the law.